

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1363 of 2000

with

SPECIAL CIVIL APPLICATION No 1644 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DARSHIN N TRIVEDI

Versus

GUJARAT UNIVERSITY  
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Appearance:

1. Special Civil Application No. 1363 of 2000  
MR DM THAKKAR for Petitioners  
MR MITUL K SHELAT for Respondent No. 1  
MR ND GOHIL for Respondent No. 2
  2. Special Civil ApplicationNo 1644 of 2000  
MR DM THAKKAR for Petitioners  
MR MITUL K SHELAT for Respondent No. 1  
MR ND GOHIL for Respondent No. 2
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Date of decision: 18/04/2000

COMMON ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. M.K.

Shelat on behalf of respondent No. 1 and Mr. Gohil for respondent No. 2. Since both these petitions pertain to same question and raise identical ground, they are being disposed of, upon request, by this common judgement.

2. Whether in the peculiar and special circumstances eight students of M.Sc. Part I for the current academic year who are informed subsequently that they are registered in M.Sc., Part I Chemistry subject for the year 1999-2000 and prevented by respondent No. 1, Gujarat University, from appearing in the final examination commencing from 25.4.2000, despite they having been granted admission by the respondent No. 2, a Science College and who have undergone studies for the same course in the college and who have also submitted their journals and who have fulfilled attendance criteria and whose registration along with fees came to be accepted by the University, deserve help of this court by exercising its powers under Article 226 of the Constitution of India or not, is the sole question which is surfaced for being determined and decided.

3. The following aspects, may be, highlighted which are uncontroverted.

- i. Respondent No. 2 is the principal of College in which all the 8 students were granted admission in M.Sc., Part I, Chemistry Subject.
- ii. Sanctioned strength as per relevant rule of the University in Organic Chemistry in each part, is prescribed at 25, in view of the rules relating to the Post Graduate studies and respondent No. 1 University had granted in the beginning of the College full strength as per the Rules, 25 students.
- iii. Notwithstanding the fixity of number of students in Post Graduate course contained in the Rules, the Vice Chancellor of the respondent University is empowered to permit admission of such number of students in a class or division, thereof, as may be decided by him in his discretion.

iv. Pursuant to exercise of such discretion, the Vice Chancellor of respondent No. 1 University was pleased to permit admission of 32 students in the same course like that M.Sc., Part I Organic Chemistry for the academic year 1996-97. Again a request came to be made by the respondent No. 2 College for admission of one more student and it came to be accepted by the Vice Chancellor in his discretion for the year 1997-98 and the same was repeated in the year 1998-99.

Again respondent No. 2 College sought permission of the Vice Chancellor for 8 additional students in the same class and course which was accepted. That is how, in the year 1999-2000 the Vice Chancellor permitted admission of 33 students instead of 25. Thus, the additional 8 students got admission in M.Sc., Part I, Organic Chemistry by respondent No. 2 College pursuant to the exercise of discretion by the Vice Chancellor. 8 petitioner students continued their studies throughout the year including journal work with requisite number of days of attendance.

4. It is true that, ordinarily, the court in exercise of its power under Article 226 of the Constitution of India would be slow to interfere in the working and academic mechanism of the University and more so, in a case of admission or appearance in the examination. It is, equally, true that the jurisdictional ambit of a writ court is very much circumscribed and the writ court cannot convert itself into an appellate forum. Therefore, ordinarily, academic word like University should be left to arrange, manage, monitor its mechanism and functions. Notwithstanding that one of the designs of the provis of the Constitution is to see that in a given case, if injustice is done to petitioner by force of circumstances and who seeks extraordinary redressal of the grievance and when court is satisfied that if intervention is not made, the petitioner who has come to the rescue for justice, and if petitioner not only goes unattended but is likely to suffer from perpetuation of injustice and in such situation, should the court raise its hands in helplessness and to be a mute morbid muzz witness of gross injustice or miscarriage of justice? This is, precisely, the issue in the peculiar facts and special circumstances emerging from the record of the case.

5. After having given extensive hearing and dispassionately examining the report placed in this group of two petitions and also some records which were tendered by the University as well as the College, in course of hearing, this court is of the clear opinion that the refusal to exercise discretionary jurisdiction in granting the relief sought, would render the 8 students who have undergone regular studies in M.Sc., Part I, Organic Chemistry subject throughout academic year whose registration forms and fees were accepted by the respondent No. 1, University who are denied the pleasure of appearing in the ensuing examination commencing from 25.4.2000 only on the ground that the permission for admission of 8 students was not accorded by the Vice Chancellor in exercise of his discretionary power with irreparable, irretrievable loss for no fault of their own.

6. Needless to mention that this is not a case wherein for the first time, the permission for admission of additional number of students had been sought and in anticipation of such permission to be given in his discretionary exercise of power by the Vice Chancellor, students came to be admitted. In preceding 3 years prior to the current academic year, the Vice Chancellor was pleased to exercise his discretion in permitting the additional students to be admitted in the same college, in the same class for the same course in Post Graduate Centre of respondent No. 2. It is, also, not the case that the permission was not sought for additional number of students in the same class, before the beginning of the current session. The application for registration of students and permission for additional number of 12 students had been sought by the respondent No. 2 from the Vice Chancellor of the respondent No. 1 University, as early as, on 16.8.1999. It manifestly evident that respondent No. 2 College sought permission for addition number of 12 students on the premise that permission for admission upto number of 33 students for the same course had already been granted, of course, it was for a year 1999-2000.

7. It is, therefore, clear that permission was sought for giving admission to 45 students that means permission of additional students due to heavy rush was sought granted in the preceding year by the Vice Chancellor of the respondent No. 1, University was taken for granted by the College, respondent No. 2, be effective even for the succeeding year and that is how upon that promise, in view of heavy rush for admission in the same course, in the same college, in the current year, the principal of

the respondent No. 2 College had sought permission of additional 12 students. Therefore, in the current year in the beginning by an application for registration of the students with permission to add 12 more students came to be made, on 16.8.1999, on a bona fide belief that the permission granted for 33 students was not required to be resought for the subsequent year and due to heavy rush of the students for the same course in the same college, request for permission of additional 12 students came to be made which remained unresponded for a long period about which there is a dispute. The respondent No. 1 has contended that permission was not granted and, accordingly, an intimation was sent on 22.10.1999 drawing attention of the respondent No. 2 college that admission should be restricted to 25 students only. The reply which is given on 22.10.1999 in response to the application dated 16.8.1999, according to the University, was received by the College, whereas disputing this contention respondent No. 2 College has stated that no such intimation was received. Even in a case of such disputed question of fact, ordinarily, this court would have raised its hands in going into this aspect. Since the examinations are to commence from next week that aspect of writ jurisprudence is not allowed to be constituted as an impediment in dispute being resolved, more so, when the career of 8 young promising students of Post Graduate is at stake who are done injustice for no fault of their own.

8. Nonetheless, on behalf of respondent No. 2 College, the concerned Head Clerk had filed affidavit in support of the petitions. However, in order to verify and ascertain as to whether any scope of irregularity or manipulation in granting admission to 8 students who are petitioners in these two petitions, respondent No. 2 was directed to file further affidavit of the Head of the Department and concerned professor who was in-charge of giving admission at the relevant point of time. Accordingly, they have also filed their affidavits.

9. From the additional affidavits filed on behalf of the respondent No. 2 College pursuant to the directions of this court, following aspects have remained unassailable.

(i) that the admission to 8 students over and above number of 25 students, which is the prescribed strength, came to be granted on merits without any other consideration except that the strength increased from 25 to 33 in the previous year was effective for the succeeding year.

(ii) The concerned Head of the Department and the professor have, clearly, and unambiguously stated that admission to the petitioners was granted on merits and who are otherwise qualified and eligible to be admitted in M.Sc., Part I, Organic Chemistry subject, with requisite number of attendance.

10. In absence of aforesaid clear emergence of the facts about the grant of admission to the petitioners, a cloud of doubt was sought to be raised on behalf of respondent No. 1 that the admission to 8 students is not found to be in order of merits or that it was not scrutinised, analysed, and examined by the expert concerned professor or the Head of the Department. It was submitted before this court that the backdoor entry of the students and that too higher course like Post Graduate and that too, in Science stream at the pleasure, behest and the fancy for some extraneous reason by the management should not be encouraged. This proposition can hardly be countenanced. It is in this context, a specific order came to be recorded by this court on 31.3.2000, whereby, specific direction was issued and pursuant to that, the Professor in-Charge and the Head of the Department were directed to file affidavits and having examined their affidavits, the cloud of doubt sought to be raised came to be dispersed.

11. Therefore, the court is, now, left with only one important aspect at this juncture is as to whether mere failure on the part of the respondent No. 2 College in reiterating or making a request again for additional strength of 8 students for the same course under the bona fide premise that it continued for the succeeding year as the same was already granted by the Vice Chancellor in exercise of his discretion for the year 1999-2000 and followed by the acceptance of registration fees, admission fees, continuance of studies throughout including submission of journals and coupled by the fact that attendance criteria is fully satisfied, should the innocent but promising Post Graduate and that too, in Science Stream students who are petitioners before this court be refused to be heard for no fault of their own and that in light of the above said factual scenario, the positive and instantaneous response would be in the negative. Again it may be noted that the responsible Head of the Department and the Principal were also in clear terms, directed to file affidavit containing an averment that no such further bona fide mistake will be

perpetuated in the succeeding years, since it was only on a mistaken belief and bona fide premise on behalf of the management, an undertaking in favour of the court has been filed that such an act will not be repeated and where in case it is repeated, the arms of law are long enough to punish them.

12. The underlying design of fixity of number of students for the admission is to see that best available educational treatment and facility could be provided for the students. When the discretion by the Vice Chancellor was exercised for the additional strength of 7 students for the year 1996-97, three years prior to the academic year in question, there remains hardly any scope that there was no possibility or difficulty in providing good education or best academic treatment by teachers was lacking.

13. After having considered the overall factual scenario emerging in light of the peculiar facts and special circumstances, this court is of the opinion that the petitioners should be allowed to appear in the examination commencing from 25.4.2000 for the final as there is no any deficiency or difficulty in eligibility criteria except that the discretion which was sought to be exercised was not exercised in favour of the students and that too, in present case not within reasonable time and that should not constitute a ground as a launching pad for severe punishment to petitioners who otherwise would be met out if permission is not granted. In the circumstances, both the petitions are required to be allowed. Accordingly, they are allowed. Rule is made absolute.

14. Before parting, a caution and caveat is placed on record in order to see that rightful claim of the students who have answered all eligibility criteria for being permitted to appear in the examination of M.Sc., Part I, Organic Chemistry subject, this court exercised its discretion in favour of the students in light of the powers under Article 226 of the Constitution of India and light of the affidavits filed before this court. However, the respondent No. 1, University, obviously, will be at liberty to exercise its role in making probe as to whether in admitting 8 students in the said course is in any way actionable, who is responsible or liable for any irregularity, misfeasance or malfeasance, if any. Therefore, it will be open for the University to pursue its role and the decision in these petition should not render any sort of obstruction or impediment in their role and resultant action, if any.

(J.N.Bhatt, J.)

(pkn)

7.7.2000

Learned advocates appearing for the parties appeared today and requested that since the judgment dictated has not, yet, been signed after it was transcribed, consensual order may be recorded. Therefore, keeping in mind the best interest of one and all concerned and in the larger interest of justice as well, above judgment is not signed and the following consensual order is passed:

Rule, service of which is waived by Mr.M.K.Shelat on behalf of respondent No.1 and Mr.Gohil for respondent No.2.

Since both these petitions raise identical questions, they are being disposed of by this common judgment.

During the pendency of petitions, petitioners-students were permitted by the University to appear in the examinations. However, the results are yet not pronounced. The examination papers were also assessed and the students await the result. On behalf of the University, Mr.Shelat, pointed out that since several complaints in respect of irregularity in admissions to some of the faculties have been received by the University, the investigations are on, and therefore, without prejudice to the rights of the University to take action against the responsible persons or authorities as per the rules, University has no objection to declare the results, since the answer-books of the petitioners have been assessed and they were permitted to appear without treating or creating it as a precedent though admissions granted by college concerned could not be said to be regular.

In view of the peculiar facts and special circumstances obtainable from the record of these two petitions, the University is directed to pronounce the results of the petitioners, who were permitted to appear and whose answer books have been assessed, with liberty to take appropriate actions against responsible and erring persons and authorities in the event of find of any irregularity in granting of admission. Both the



petitions stand disposed of in the aforesaid terms. Rule is made absolute in both the petitions to that extent.

(J.N.Bhatt, J.)